IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for Revision
in terms of Article 138 of the Constitution
read with Section20(2)of the Bail Act No.30 of 1997.

Sulaiman Lebbe Mohamad Uvais

Petitioner-Petitioner

Vs

CA (PHC)APN 86/2010
HC Colombo B 1469/2004

Director General
The Commission to Investigate
Allegations of Bribery and Corruption.
Respondent-Respondent

Before : Sisira de Abrew J &
Anil Gooneratne J

Counsel : CR de Silva President's Counsel with Vishva Gunaratne and Dulan Weerawardene instructed by N. Senanayake for the petitioner-petitioner.
Suneetha Jayasinghe Deputy Director General
Bribery Commission for the Respondent-Respondent

Argued on : 25.11.2010

Decided on : 3.2.2011

Sisira de Abrew J.

The accused in this case was indicted on four counts under the Bribery Act. The 1st and 2nd counts are soliciting Rs.50,000 offences punishable under sections 19(b) and 19(c) of the Bribery Act. The 3rd and 4th counts are accepting Rs.50,000/-, offences punishable under sections 19(b) and 19(c) of the Bribery Act. He was convicted on all four counts. On the 1st count he was sentenced to a term of three years rigorous imprisonment (RI) and to pay a fine of Rs.5000/- carrying a default sentence of one year imprisonment. Same punishment was imposed on count No.3. In addition to the above punishment he was ordered to Rs.50,000/- as a penalty carrying a default sentence of two years imprisonment. The learned trial judge however did not impose a punishment on count No.2 and 4. The accused has preferred an appeal against the said conviction and sentence. The petitioner, by this petition moves Court to release the accused on bail pending appeal. Learned President's Counsel for the petitioner drawing our attention to page 14 of the judgment contended that the learned trial Judge having first rejected the evidence of the complainant later relied on his evidence. He therefore contended that the learned trial Judge had not read the judgment when he signed it. He therefore contended that the learned trial Judge when delivering the judgment had not followed the procedure established by law and this was in violation of Section 283(1) of the Criminal Procedure Code (CPC) and Article 13(4) of the Constitution. He therefore contended that the accused had not had a fair trial and this should be considered as an exceptional ground to release the accused on bail. I now advert to this contention. The allegation that the judge had not read the judgment when he signed it is a serious one. Therefore Court must consider whether such an

allegation can in fact be accepted. Once a judge places his signature on his judgment he does so after reading it. It is impossible to believe a judge who has wealth of experience in conducting trials and writing judgments would sign a judgment without reading it. I therefore reject this contention.

Learned PC next contended that in any event the judgment will have to be set aside because of the above defect. I now advert to this contention. Although the learned trial Judge rejected the evidence of the complainant at page 14 of the judgment, he, at page 24, 25, and 26 accepted his evidence. Whether the above observation is sufficient to vitiate the conviction or not must be decided by the Court of Appeal hearing the main appeal. Even if this is considered to be a misdirection Court of Appeal hearing the main appeal is empowered to affirm the conviction under provisos to Section 334 of the Criminal Procedure Code and Article 138 of the Constitution after considering the evidence of the case. The Court hearing an application to release an accused person on bail pending appeal should not pre-empt the hearing of the appeal. This view is supported by the judgment of the Supreme Court in Attorney General Vs Ediriweera [2006] BLR page 12 wherein Justice Thilakawardene remarked thus: "In any evevnt our Courts have held consistently, that in an application for bail after conviction, the appellate Court should not pre-empt the hearing of the substantive appeal." For these reasons, I reject the above contention of the learned PC.

Learned PC next contended that since the appeal has, so far, not been listed for hearing and that the accused has been sentenced to a term of six years RI the accused should be released on bail. In my view the delay in

hearing the appeal cannot be considered as an exceptional ground to release an accused on bail. This view is supported by the judgment of the Supreme Court in Attorney General Vs Ediriweera (supra) wherein Justice Thilakawardene observed: "In any event delay in listing of cases is not an exceptional circumstance as it is common to all cases." It is now settled law that an application for bail pending appeal can be allowed only upon establishment of exceptional circumstances. This view is supported by the judgment of the Supreme Court in Attorney General Vs Ediriweera (supra) wherein Supreme Court held: "the norm is that bail after conviction is not a matter of right but would be granted only under exceptional circumstances."

In Rex Vs Muthuretty 54 NLR 43 Swan J held "that in a bail pending appeal, Court will not grant bail as a rule. Bail is granted only in exceptional circumstances."

I have gone through the petition filed by the petitioner and considered the submission made on his behalf. In my view the petitioner has not established exceptional circumstances to release the accused on bail.

For the aforementioned reasons, I dismiss the petition of the petitioner.

Petition dismissed.

Judge of the Court of Appeal

Anil Gooneratne J.

I agree.

Judge of the Court of Appeal